

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THANH QUANG,

Plaintiff,

v.

CSP CALIFORNIA MEDICAL
FACILITY,

Defendant.

No. 2:22-cv-1341 TLN CKD P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. On March 7, 2023, plaintiff's amended complaint was dismissed with leave to file a second amended complaint. Plaintiff has now filed a second amended complaint.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

In his second amended complaint, as in the amended complaint, plaintiff complains about medical care he has received at the California Medical Facility. As plaintiff has already been informed, inadequate medical care can violate the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). Plaintiff can state a claim upon which he can proceed by alleging facts

1 indicating a prison official caused or is causing injury to plaintiff as a result of deliberate
2 indifference to a prisoner's serious medical needs. Id. In his second amended complaint, plaintiff
3 fails to make such allegations. Plaintiff complains about the care he has received, but fails to
4 adequately allege the care was the result of at least the deliberate indifference of a prison official.

5 For these reasons, the second amended complaint fails to state a claim upon which relief
6 can be granted and the court will recommend that it be dismissed. The court has given plaintiff
7 two opportunities to amend his pleadings in order to state a claim upon which he might proceed.
8 The court will not grant plaintiff a third opportunity to amend as that appears futile.

9 In accordance with the above, IT IS HEREBY ORDERED that the court's April 19, 2023
10 findings and recommendations are vacated.

11 IT IS HEREBY RECOMMENDED that:

12 1. Plaintiff's second amended complaint be dismissed for failure to state a claim upon
13 which relief can be granted; and

14 2. This case be closed.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
17 after being served with these findings and recommendations, plaintiff may file written objections
18 with the court. The document should be captioned "Objections to Magistrate Judge's Findings
19 and Recommendations." Plaintiff is advised that failure to file objections within the specified
20 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
21 (9th Cir. 1991).

22 Dated: August 29, 2023

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24 CAROLYN K. DELANEY
25 UNITED STATES MAGISTRATE JUDGE
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